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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,832	12/27/2001	Jack E. Haken	US010712	5495

24737 7590 10/29/2004

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EXAMINER

WEBB, JAMISUE A

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 10/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/029,832

Applicant(s)

HAKEN, JACK E.

Examiner

Jamisia A. Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8,10,11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8,10,11 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. With respect to Claim 1: the phrases “the items of goods and/or services” and “the ordered item” are indefinite. The phrase “the items of goods and/or services” is grammatically incorrect, which leaves it unclear what an “item of good” is referring to, isn’t an item and a good the same thing? How can you have an item of a good? The current amendment amended the claims to overcome a previous 112 2nd paragraph rejection, however the amendment was not sufficient to overcome the rejection. The amendment allows for a service to be ordered, therefore if a service is ordered, it is unclear what “the ordered items” is referring to. The examiner suggests writing out the same terminology from previously in the claim.

4. With respect to Claims 1, 3, 5 and 6: the phrases “calculating candidate rendezvous positions” and “recalculating an updated delivery rendezvous position” are indefinite. It is unclear to the examiner what “calculating” is referring to, is this calculating the distance, or the time traveled. Furthermore, a position is a reference point or place, therefore it is unclear how to calculate a position.

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5. With respect to Claims 1-4: Claim 1 does not complete the objective of the preamble.

The preamble recites a method for delivering items to a customer, yet the all the claim accomplishes is providing a list of delivery positions.

Claim Rejections - 35 USC § 101

6. Claim 13 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim is directed to an apparatus, which is an electrical signal that contains information. An electrical signal is a non-tangible object, it is not being received anywhere, nor is it being transmitting. The applicant is merely claiming the signal itself, which is non-statutory subject matter.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-3, 5, and 10-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Wood et al. (US 2004/0034571).

9. With respect to Claim 1: Wood et al. (US 2004/0034571) discloses a method for delivering items, which were ordered over the internet by a customer which uses a WAP-enabled mobile phone (see abstract, Figure 1, and Page 1, Paragraph 0011) which comprises the steps of

- a. Receiving order data from the wireless terminal (Page 2 paragraph 0017), including information on type and quantity of goods (page 3, paragraph 0031), the present position of the customer (user's premises, Page 4, paragraph 0054) and one or more positions on the customer's anticipated route of travel (Page 3, paragraph 0032).
 - b. Identifying one or more supply locations (Page 3, paragraphs 0032-0033).
 - c. Identifying one or more carriers (page 3, paragraph 0037).
 - d. Determining rendezvous criteria for both customer and carrier (Page 3, paragraph 0032).
 - e. Calculating possible positions which mean rendezvous criteria (Page 3 paragraph 0032).
 - f. Sending proposed positions to the customer's wireless terminal (Page 3 paragraphs 0033-0036).
10. With respect to Claim 2: Wood discloses the order data including desired delivery time (Page 3, paragraph 0035).
11. With respect to Claim 3: Wood discloses the step of calculating delivery routes for each proposed delivery positions (Page 3, paragraph 0040 and Page 4, paragraph 0056).
12. With respect to Claim 5: Wood discloses the customer sending an order for delivery (Page 3, paragraphs 0032-0034, the examiner considers once the order is placed, that gives the authorization from the customer to deliver the items to the rendezvous position, which the examiner considers the address imputed in paragraph 0032).
13. With respect to Claim 11: Wood discloses the use of a server (30).

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14. With respect to Claim 12: Wood discloses the use of a customer's wireless data terminal (See Page 2, paragraph 0017 and page 3, paragraph 0038).

15. With respect to Claim 10: Wood discloses transmitting an identity confirming message to the customer's wireless data terminal (Page 2, paragraphs 0019 and 0028).

16. With respect to Claim 13: Wood discloses the use of electrical signals used to transmit information on customer order data (See Page 2, paragraph 0017 and page 3, paragraph 0038).

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claims 4 and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood et al. in view of O'Meara et al. (US 2002/0077876).

19. With respect to Claims 4 and 6: Wood discloses the customer giving a delivery address information and step of calculating includes the delivery address of the customer as well as the GPS location of the carrier (Page 4, paragraph 0044), but fails to disclose calculating the route based on travel constraints, and to update the route of the rendezvous position based on the location of the customer and the carrier. O'Meara discloses a method for allocating or dispatching delivery or repair vehicles (see abstract), which are based on travel constraints such as anticipated traffic during rush hour (Page 2, paragraph 0037), and can change the anticipated

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time of arrival, or route for the rendezvous position, based on the location of the driver/service person (See page 2, paragraphs 0028 and 0029, and page 3, paragraph 0036-0038). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Wood, to include the ability to factor in travel constraints and to modify times and routes in order to improve the efficiency of scheduling the allocation of delivery and service vehicles (See O'Meara Page 1).

20. With respect to Claim 7: Wood discloses transmitting the updates position to the carrier's terminal and the customer's terminal (See Page 4, Paragraph 0044).

21. With respect to Claims 8: Wood discloses the use of a server (30).

22. With respect to Claim 9: Wood discloses the use of a customer's wireless data terminal (See Page 2, paragraph 0017 and page 3, paragraph 0038).

Response to Amendment

23. The Affidavits filed on 8/11/04 under 37 CFR 1.131 has been considered but is ineffective to overcome the Wood et al. (US 2004/0034571) reference.

24. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Wood reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). Every limitation in the claims are not

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shown in the evidence of either of the affidavits. The Evidence shows a general concept, but does not show every claimed limitation

25. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Wood reference to either a constructive reduction to practice or an actual reduction to practice. The applicant has submitted two affidavits, both affidavits make a general statement that there was due diligence from a day before the Wood reference to the reduction of practice, or the filing of the application. However, in order to show diligence, one must show diligence for every day in the time period. The statements need to be precise, not a general statement. Furthermore, in the affidavit made by Mr. Haken he states that "I believe that I began drafting... on Monday December 10..." this is not a clear and definite statement. Did he actually begin drafting it on the 10th, or was that just an estimate on when he may have started it. The affidavit needs a more detailed explanation on a day-to-day basis to show diligence, for the entire time period between one day before the Wood reference to the day of the reduction to practice.

Response to Arguments

26. With respect to Applicant's arguments that "calculating a position" is old and well known in the art: Where as calculating a position is known in the art, and it is described in the specification, it is given a reference unit for the calculation. For example, the specification describes multiple ways of calculating positions but always gives the calculations based on a some reference unit, such as time, distance, and longitude/latitude. The claimed limitation, gives

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no reference units, so it is unclear what the calculation is based on. Therefore the rejection still stands as stated above.

27. With respect to Applicant's arguments that body of the claim does not have to complete the objective of the preamble, and there is no rule that says it does: While the rule may not use those exact words, MPEP 2173 does say that the claims must distinctly point out the invention. The invention here is a method for delivery, and Claim 1 does not disclose the step that allows for the delivery of the item. All that is done is a list is created, therefore an essential step/limitation is missing, which creates indefinites in the claim, therefore rejection stands as stated above.

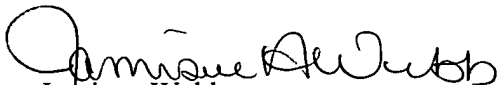
Conclusion

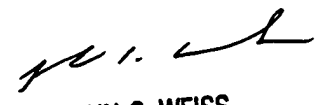
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jamisue Webb


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